

FILED

August 3 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 10-0327

FILED

AUG 03 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

CHARLES L. CADDELL,

Plaintiff and Appellant,

v.

HELENA ELDERHOUSING, INC., a Montana
Corporation, and ACCESSIBLE SPACE INC., a
Minnesota Corporation,

Defendants and Appellees.

ORDER

The Appellees have filed a Motion to Dismiss Appeal. The First Judicial District Court, Lewis and Clark County order from which Charles L. Caddell (Caddell) has appealed was issued on May 13, 2010. The docket reflects that the Notice of Appeal was filed on June 30, 2010.

While Caddell received a copy of the Order of Dismissal with Prejudice, he challenges the authority and jurisdiction of Hon. Dorothy McCarter to sign the order. Caddell also states that he was hospitalized in early May with pneumonia.

Caddell filed a motion to vacate the Court's May 13, 2010, Order. On June 7, 2010, Hon. Jeffrey M. Sherlock issued an order denying Caddell's motion to vacate, and also deemed that Caddell's November 6, 2009, Rule 60(b) motion was denied for the reason it had not been ruled upon in 60 days. It is Caddell's position that he did not have to appeal from the May 13 order, but instead is appealing from the June 7 order that denied his motion to vacate.

In the Motion to Dismiss Appeal, counsel for the Appellees stated that he contacted Caddell regarding the Motion to Dismiss, but that Caddell did not indicate whether he objected to the motion.

The May 13 Order of Dismissal with Prejudice is the dispositive order which conclusively determined the rights of the parties and settled all claims in controversy,

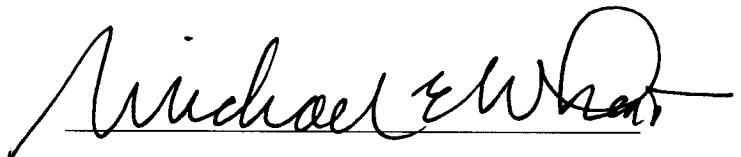
which satisfies the definition of a “final judgment.” M. R. App. P. 4(1). The Order of Dismissal with Prejudice is the proper order from which an appeal may be taken. Further, when contacted by opposing counsel, Caddell did not unequivocally object to the motion.


THEREFORE, IT IS ORDERED that the Motion to Dismiss Appeal is GRANTED.

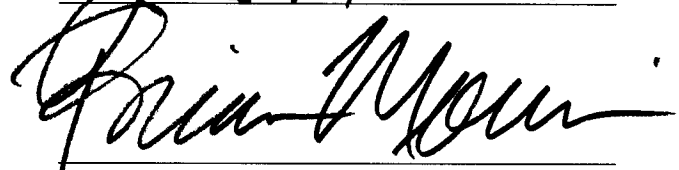
DATED this 3rd day of August 2010.



Chief Justice







Justices